
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 16.2.1998 (Annexure : B to the petition) passed by Commissioner of Police, Ahmedabad City, under Section 3(2) of the Prevention of Anti-social Activities Act (for short 'PASA') and for immediate release of the petitioner from illegal detention.

2. From the grounds of detention it appears that considering the eight cases registered against the petitioner under the Bombay Prohibition Act and further considering the statements of two confidential witnesses the detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed.

3. This order is under challenge on two grounds. The first is that the activities of the petitioner were not prejudicial for maintenance of public order and the second ground is that the representation dated 5.11.1998 sent by the Advocate of the petitioner was not considered by the State Government.

4. Both these grounds have substance and force.

5. So far as the second ground is concerned it is admitted in the counter affidavit of Shri B.K.Joshi, Section officer, PASA, filed today, in Para : 2 that the representation dated 5.11.1998 addressed to the Home Minister of Gujarat was received in the office of the Home Minister on 6.11.1998. It was forwarded to the Home Department for necessary action on 7.11.1998. Thereafter the representation remained untraceable which is patently clear from Para : 2 of this counter Affidavit. Learned A.G.P. has not been able to assign any reason where this representation is and why it has not been decided so far. The fact, however, remains that the representation dated 5.11.1998 sent by the Advocate of the petitioner has not been decided so far. Non-consideration of representation of the petitioner has therefore rendered the detention and continued detention of the petitioner illegal and on this ground alone the detention order can be quashed.

6. The second ground has also substance. Eight cases registered against the petitioner under the Bombay Prohibition Act were on account of the activities of the petitioner prejudicial for maintenance of law and order for which the petitioner was booked under relevant sections of the Bombay Prohibition Act. These activities cannot be said to be prejudicial for maintenance of public order.

7. So far as the statements of two confidential witnesses are concerned it can safely be said that the incidents narrated by these witnesses cannot be said to have created a situation prejudicial for maintenance of public order.

8. For the reasons given above the impugned order of detention cannot be sustained. It has therefore to be quashed. The writ petition is therefore allowed. The impugned order of detention dated 26.2.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

Date : February 04, 1999 (D. C. Srivastava, J.)

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